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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,012	09/05/2003	W. John Gardenier	1442.033C	8159

23405 7590 01/18/2006

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ALBANY, NY 12203

EXAMINER

PHILLIPS, CHARLES E

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 01/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/656,012

Applicant(s)

GARDENIER ET AL.

Examiner

Charles E. Phillips

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-26,28-32 and 35-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-26,28-32 and 35-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

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Applicant's traversal of the restriction requirement on the grounds that same was not previously presented does not address the reasons given for the restriction and are not convincing; however, due to the cancellation

of claims 35-40, in the 12/01/05 communication, the issue is rendered moot. Note that the text of cancelled claims should not be provided.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21,25,28-29 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Caron et al.

These claims are deemed sub-combination claims directed to a sound system. The phrase "for a spa," sets forth no structural limitation. Caron et al provide full response in sound wave guides 11 and 12, and source of sound 11A and 11B. The device is capable of use in a spa as set forth in col. 4, lines 33-35. The area of the wave guides as set forth in col. 2, line 67 through col. 3, line 1, which would render approximately .8 square inches, falls within the .25 to 6 inch range claimed here, which would render a low point of the range of approximately .4 square inches.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22-24,26 and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diamond in view of Caron et al.


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Diamond teaches the provision of sound provided to the user of a spa as evidenced by speaker 39 mounted in an opening in a spa housing covered by grill work 52. Caron et al teach sound wave guides 11 and 12 as set forth supra. To employ the latter in the environment of the former would have been obvious to the ordinary artisan as the substitution of one sound delivery arrangement for another would have constituted an obvious substitution of equivalents and as taught by Caron et al at col. 4, lines 33-35

Applicant should confirm the choice previously made in the election of species.

Any inquiry concerning this communication should be directed to Charles E.

Phillips at telephone number 571-272-4893.


Charles E. Phillips
Primary Examiner